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53437 7590 06/05/2007 ROBERT M. SCHWARTZ, P.A. P.O. BOX 221470 HOLLYWOOD, FL 33022			EXAMINER KOPPIKAR, VIVEK D	
			ART UNIT 3626	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/941,841	MAYAUD, CHRISTIAN	
	Examiner	Art Unit	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Application

1. Claims 70-115 are pending and have been examined in this application. This is a non-final Office Action sent out by the Office in response to the Applicant's Response dated February 22, 2007.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 70-77, 81-82, 84-86, 91-100, 102-107, 111-113 and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk in view of "Lunar Radiation Corp." and in further view of US Patent Number 5,301,105 to Cummings.

(A) As per amended claim 70, Kirk teaches a computerized prescription system (Kirk: Abstract):

at least one user computer, said user computer having a graphical user interface for displaying and providing access to (1) a plurality of patient records, each patient record including information about a patient's prescription history (Kirk: Figure 2; Col. 1, Ln. 50-Col. 2, Ln. 3; and Col. 3, Ln. 3-7 and 20-42).

Kirk does not teach that (2) information about pharmaceuticals (regarding) medical conditions for which the pharmaceuticals are suitable for treating, however, this feature is taught by "Lunar Radiation Corp" (Main Paragraph, Sentence 2). At the time of the invention it would

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have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk in view of “Lunar Radiation Corp.” does not teach or suggest that the information about pharmaceuticals is correlated with medical conditions (e.g. use of a drug) for which the pharmaceuticals are suitable for treating, said information derived from at least two of said plurality of records, however, this feature is taught in Cummings (Detailed Description: Paragraph 33). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(B) As per claim 71, in Kirk the user computer is connected to a communications medium by which said user computer may communicate with one or more other computers (Figure 5 and Col. 4, Ln. 34-46).

(C) As per claim 72, in Kirk one or more computers includes at least one computer run by or on behalf of at least one of (1) a Health Maintenance Organization, (2) a hospital, (3) an insurance company, (4) a drug benefit plan, (5) a pharmacy, (6) a laboratory, and (7) a physician practice (Col. 3, Ln. 20-42).

(D) As per claim 73, in Kirk the user computer is configured to gather information from more than one of said one or more computers and presents that information to a user upon request

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submitted through said graphical user interface (Figure 4; Col. 3, Ln. 23-24 and Col. 4, Ln. 47-Col. 5, Ln. 6)

(E) As per claim 74, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into a prescription history for a patient (Figure 1; Col. 3, Ln. 23-24; Col. 3, Ln. 43-Col. 4, Ln. 7 and Col. 5, Ln. 55-Col. 6, Ln. 5)

(F) As per claim 75, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about pharmaceuticals (Figure 1 and Col. 4, Ln. 46-Col. 5, Ln. 5).

(G) As per claim 76, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about the properties of pharmaceuticals (Col. 4, Ln. 46-68)

(H) As per claim 77, in Kirk the graphical user interface permits a user to receive a prescription directly from a point of care provider over said communications medium (Figures 1 and 4; Col. 2, Ln. 35-42 and Col. 5, Ln. 55-Col. 6, Ln. 5)

(I) As per claim 81, in Kirk when a pharmaceutical is prescribed for a condition, and the pharmaceutical is not the best first line agent for treatment of that condition, the graphical user interface will suggest an alternative pharmaceutical to be prescribed instead (Col. 5, Ln. 28-32).

(J) As per claim 82, in Kirk the guidelines relating to the use of said alternative pharmaceutical may be retrieved using said graphical user interface (Col. 5, Ln. 28-32).

(C) As per claim 84, Kirk teaches a computer implemented method of formatting an electronic prescription (Kirk: Abstract), comprising the steps of:

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- a. assembling a plurality of patient records, using a computer interface, the prescription information including a patient condition associated with a prescription (Kirk: Col. 2, Ln. 10-30 and Col. 4, Ln. 47-Col. 5, Ln. 21);
- b. the prescription information having been formatted for communications (Kirk: Col. 4, Ln. 47-Col. 5, Ln. 21).
- c. receiving said prescription information at a pharmacy over a communication link (Kirk: Figure 2 and Col. 3, Ln. 20-42).

Kirk does not teach the step of including a patient condition associated with a prescription, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

The combined method of Kirk in view of “Lunar Radiation Corp.” do not teach the following steps which are taught by Cummings (Detailed Description: Paragraph 33):

sorting the received prescription information from at least two patient records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed and outputting the list.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings (Detailed Description: Paragraph 33). At the time of the

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invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(D) As per claim 86, in Kirk the prescription information is selected from a predefined list (Col. 3, Ln. 38-42).

(E) As per claim 91, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

at least one user computer, said user computer having a graphical user interface permitting display of prescription information received from a prescriber and providing access to: at least one user computer, said user computer having a graphical user interface permitting display of prescription information received from a prescriber and providing access to one or more of (1) information about a plurality of medical histories (2) information about therapeutic agents and (3) information about individual prescriber activity (Figures 1-2; Col. 1, Ln. 50-Col. 2, Ln. 3; and Col. 3, Ln. 20-42).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with

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the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

The combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(F) As per claim 92, in Kirk information of an individual prescriber is stored on said user computer and also on another computer (Figures 1 and 5; Col. 4, Ln. 34-46; Col. 5, Ln. 55-Col. 6, Ln. 5).

(G) As per claim 93, in Kirk information about a medical history includes identification of one or more prescriptions and an identification (verification) of a person who prescribed said one or more prescriptions (Figures 1 and 4 and Col. 4, Ln. 47-61).

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(H) As per claim 94, Kirk teaches that the identification of a person who prescribed one or more prescriptions includes identification of how to contact (telephone numbers) the person who prescribed one or more prescriptions (Figures 1-5; Col. 3, Ln. 20-42 and Col. 5, Ln. 21-27).

(I) As per claim 95, in Kirk the graphical user interface includes providing suggestions to a provider (deviations from prescribed schedules) if dosages do not reflect said patient's medical history (Figures 1 and 3-4; Col. 5, Ln. 40-Col. 6, Ln. 5).

(J) As per claim 96, Kirk teaches a computer program product, comprising (Kirk: Abstract):

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions for capturing prescription information and providing access to one or more of (1) a plurality of patient records, each patient record including information about a patient's prescription history, and (2) information about pharmaceuticals (Kirk: Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp" (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from "Lunar Radiation Corp." with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in "Lunar Radiation Corp." (Main Paragraph, Sentence 4).

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The combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(K) As per claim 97, Kirk teaches a computer program product (Kirk: Abstract), comprising:

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions (Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 8-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by “Lunar Radiation Corp” (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with

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the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk does not teach that the computer program product contains instructions for receiving prescription information from a plurality of records, said prescription information for each record including a patient condition associated with a prescription, sorting the received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed, and outputting the list, however, this feature is taught by The combined system of Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

- (L) As per claim 98, Kirk teaches a computer program product (Kirk: Abstract), comprising:
- a. a memory medium (Kirk: Col. 3, Ln. 41-63) ; and

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b. a computer program stored on said memory medium, said computer program containing instructions for interrogating databases expected to contain information about a patient based on a patient's relationship with the provider of that database and for assembling patient information into a chronologically current version of said patient's prescription history (Kirk: Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp" (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from "Lunar Radiation Corp." with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in "Lunar Radiation Corp." (Main Paragraph, Sentence 4).

In the combined product of Kirk in view of "Lunar Radiation Corp." there is not a means wherein the chronologically current version of said patient's prescription history being displayed but not being permanently stored, however, this feature is well known in the art as evidenced by Ertel (Col. 38, Ln. 15-20). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of Kirk in view of "Lunar Radiation Corp." with the aforementioned teachings from Ertel with the motivation of having a means wherein temporarily files which are of use only for a short period of time are not permanently stored and therefore do not permanently take up precious storage capacity on a computer.

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(M) As per claim 99, As per claim 99, Kirk teaches a computer program product (Kirk: Abstract), comprising:

- a. a memory medium (Kirk: Col. 3, Ln. 43-61); and
- b. a computer program stored on said memory medium, said computer program containing instructions for implementing a graphical user interface permitting display of prescription information and permitting access to one or more of (1) information about a plurality of medical histories, (2) information about therapeutic agents and (3) information about individual prescriber activity (Kirk: Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp." (Main Paragraph, Sentence 2).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from "Lunar Radiation Corp." with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in "Lunar Radiation Corp." (Main Paragraph, Sentence 4).

The combined product of Kirk in view of "Lunar Radiation Corp." does not teach the following feature which is taught by the combined system of Kirk in view of "Lunar Radiation Corp." does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one

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medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of "Lunar Radiation Corp." with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

a computer program containing instructions for sorting the information from at least two of the plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber, and outputting said report.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of "Lunar Radiation Corp." with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(N) As per claim 100, Kirk teaches a prescription fulfillment software system implemented on a computer comprising a program embodied on a computer-readable medium, the system being for use by pharmacy personnel to fill an electronic prescription prescribing a drug treatment for a patient condition exhibited by a patient, the patient having a drugs benefit provider, the drugs benefit provider issuing a prescription benefit plan including a drug

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formulary for the patient listing at least one drug preferred by the drugs benefit provider for treatment of the condition, the electronic prescription comprising a patient identifier, at least one prescribed drug and at least one drug quantifier for the prescribed drug (Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68), the prescription fulfillment system providing:

- a) a prescription screen display (Figures 1 and 3-4 and Col. 3, Ln. 20-61), displaying:
 - i) patient-identifying data (Col. 3, Ln. 48-51);
 - ii) prescribed drug identification data (Col. 4, Ln. 46-68);
 - iii) drug quantification data (Col. 4, Ln. 59-61); and

Kirk does not teach the following limitation which is taught by Cummings (Detailed Description: Paragraph 33):

- b) drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescriptions is filled with a benefit plan recommended drug, however, this feature is well known in the healthcare industry as evidenced by Cummings (Detailed Description: Paragraph 33):

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of "Lunar Radiation Corp." with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

- (O) As per claim 102, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

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at least one user computer, said user computer having a graphical user interface permitting capture of prescription information and providing access to all of (1) information about a plurality of prescription histories, (2) information about pharmaceuticals, and (3) information about the properties of pharmaceuticals, wherein said user computer is connected to a communication medium by which said user computer communicates with one or more other computers run respectively by or on behalf of one or more of a group consisting of (a) a Health Maintenance Organization, (b) an insurance company, (c) a drug benefit plan, (d) a pharmacy run by a different organization than the organization running the user computer, (e) a laboratory, and (f) a physician practice (Kirk: Figures 1, 3-4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp." (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the system of Kirk with the aforementioned feature from "Lunar Radiation Corp." with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in "Lunar Radiation Corp." (Main Paragraph, Sentence 4).

Kirk in view of "Lunar Radiation Corp." do not teach or suggest that the information about pharmaceuticals is correlated with the medical conditions for which the pharmaceuticals are suitable for treating, said information about pharmaceuticals being derived from at least two of said plurality of prescription histories, however, this feature is well known in the healthcare industry as evidenced by Cummings (Detailed Description: Paragraph 33). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the

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combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings (Detailed Description: Paragraph 33):

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

(P) As per claim 103, in Kirk the user computer is configured to gather information from more than one of said one or more computers and presents that information to a user upon request submitted through said graphical user interface (Kirk: Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68)

(Q) As per claim 104, in Kirk in which the user computer is configured to gather information from more than one of said one or more computers and compile that information into a prescription history for a patient (Kirk: Col. 3, Ln. 20-61 and Col. 4, Ln. 27-68).

(R) As per claim 105, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about pharmaceuticals (Kirk: Col. 4, Ln. 46-68)

(S) As per claim 106, in Kirk the user computer is configured to gather information from more than one of said one or more computers and compile that information into said information about the properties of pharmaceuticals (Kirk: Col. 4, Ln. 46-68)

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(T) As per claim 107, in Kirk the graphical user interface permits a user to send a prescription directly to a pharmacy to be filled over said communications medium (Kirk: Figures 1 and 3-4 and Col. 2, Ln. 55- Col. 3, Ln. 12).

(U) As per claim 111, in Kirk when a pharmaceutical is prescribed for a condition, and the pharmaceutical is not the best first line agent for treatment of that condition, the graphical user interface will suggest an alternative pharmaceutical to be prescribed instead (Kirk: Col. 5, Ln. 28-32).

(V) As per claim 112, in Kirk the guidelines relating to the use of said alternative pharmaceuticals may be retrieved using the graphical user interface (Kirk: Figures 1 and Col. 5, Ln. 22-32).

(W) As per claim 115, Kirk teaches a computerized prescription system (Kirk: Abstract), comprising:

at least one user computer, said user computer having a graphical user interface permitting capture of prescription information and providing access to all of (1) information about a plurality of medical histories, (2) information about therapeutic agents and (3) information about individual prescriber activity, wherein the information in (1), (2) and (3) is obtained from only databases located remotely from the location of the said user computer (Figure 2; Col. 1, Ln. 50-Col. 2, Ln. 34; Col. 3, Ln. 20-42).

Kirk does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed for, however, this feature is taught by "Lunar Radiation Corp." (Main Paragraph, Sentence 2). At the time of the invention it would have been obvious for one of ordinary skill in the art to

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have modified the system of Kirk with the aforementioned feature from “Lunar Radiation Corp.” with the motivation of giving users of the system a more efficient and meaningful means of managing patient data, as recited in “Lunar Radiation Corp.” (Main Paragraph, Sentence 4).

Kirk in view of “Lunar Radiation Corp.” does not teach or suggest the following feature which is taught by Cummings (Detailed Description: Paragraph 33):

a sorting device for sorting information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of “Lunar Radiation Corp.” with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

5. Claims 78-80, 83, 87-90, 108-110 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk, as applied to Claims 70, 84, 102, above in view of US Patent Number 5,774,879 to Custy.

(A) Claims 78-80, 83, 87-90, 108-110 and 113 are directed towards customized methods of arranging and sorting data. This feature is not taught in Kirk, however, it is well known in the art as evidenced by Custy (Col. 15, Ln. 38-53). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the health support system of Kirk

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with the customized data arranging and sorting feature as taught in Custy with the motivation of providing the user with a means of producing customized reports or modifying existing reports, as recited in Custy (Col. 39-41).

6. Claim 101 is rejected as being unpatentable over Kirk in view of US Patent Number 5,642,731 to Kehr.

(A) As per claim 101, Kirk teaches a prescription fulfillment software system implemented on a computer comprising a program embodied on a computer-readable medium, the system being for use by pharmacy personnel to fill an electronic prescription prescribing a drug treatment for a patient condition exhibited by a patient, the patient having a drugs benefit provider, the drugs benefit provider issuing a prescription benefit plan including a drug formulary for the patient listing at least one drug preferred by the drugs benefit provider for treatment of the condition, the electronic prescription comprising a patient identifier, at least one prescribed drug and at least one drug quantifier for the prescribed drug (Col. 3, Ln. 20-61 and Col. 4, Ln. 46-68), the prescription fulfillment system providing:

- a) a prescription screen display (Figures 1 and 3-4 and Col. 3, Ln. 20-61), displaying:
 - i) patient-identifying data (Col. 3, Ln. 48-51);
 - ii) prescribed drug identification data (Col. 4, Ln. 46-68);
 - iii) drug quantification data (Col. 4, Ln. 59-61); and

Kirk does not teach the following feature which is taught by Cummings(Detailed Description: Paragraph 33): b) drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescriptions is filled with a benefit plan recommended drug.

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At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined system of Kirk in view of "Lunar Radiation Corp." with the aforementioned feature from Cummings with the motivation of assisting a healthcare provider in identifying a recommended treatment protocol for a given diagnosis, as recited in Cummings (Detailed Description: Paragraph 33).

Kirk does not teach a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment, the drug contraindication review routine accessing contraindication information regarding the prescribed drug and generating an alert regarding a relevant such contraindication. The aforementioned feature, although not present in Kirk, is nevertheless well known in the art as evidenced by Kehr (Col. 6, Ln. 65-Col. 7, Ln. 13). At the time of the invention it would have been obvious to one of ordinary skill in the art to have modified the health support system of Kirk with the aforementioned feature from Kehr which warns of drug contraindication with the motivation of providing a means of warning a patient regarding potential drug interactions, as recited in Kehr (Col. 7, Ln. 5-10).

7. Claim 114 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk as applied to Claim 102.

In Kirk the user computer is not a personal digital assistant. However Kirk does suggest that a portable computer can be used as part of the health support system (Figure 3).

Furthermore, the examiner takes Official Notice with respect to using a personal digital assistant as a user computer. At the time of the invention it would have been obvious for one of ordinary skill in the art to have used a personal digital assistant as a user computer with the motivation of

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having an easily transportable and portable means of accessing the health support system taught by Kirk.

Response to Arguments

8. Applicant's arguments filed on February 22, 2007 with respect to claims 70-115 will be addressed.

(1) Applicants argue that the prior art of record does not teach the step of creating a list of pharmaceuticals correlated with medical conditions, however, this argument is moot in view of the new grounds of rejection over the Cummings reference.

(2) The Applicants argue that the prior art does not teach drug formulary information, however, the Office takes the position that the patient's medical history and treatment programs recited in Lunar (Abstract: Page 1) include drug formulary information.

(3) Applicants argue that the prior art of record does not teach or suggest a chronologically current version of the patient's prescription history "not being permanently stored", however, as mentioned in the rejection of Claim 98, above, Kirk teaches this very feature (Kirk: Figures 1 and 4; Col. 3, Ln. 20-42 and Col. 4, Ln. 46-68).

(4) Applicants argue that the Kehr reference fails to teach the step of performing a drug contraindication review. However, the Office takes the position that Kehr does in fact teach this feature (Col. 6, Ln. 65-Col. 7, Ln. 13) and it is not clear how the applicants came to the conclusion that the warning issued in Kehr is independent of the prescription process—there are no citations to any particular portion of the Kehr reference to support this proposition.

(5) Applicants argue that Lunar cannot be applied to support an obvious rejection because it does not have an enabling disclosure. However, Lunar clearly teaches the features which are

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relied upon by the Office to reject pending claims of the instant application and just because Lunar is a press release from a news wire does not mean that it does not qualify as prior art.

Conclusion

9. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.


If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,


Vivek Koppikar

5/25/2007


C. LUKE GILLIGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600